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question for the jury was whether defendant made a *bona fide* effort to discover and mine the ore, it was error for the court to instruct the jury to consider whether defendant rescinded the lease under a clause authorizing rescission on payment of a year's royalty from the date the contract was rescinded.

3. Where defendant canceled a mining lease because it alleged the land did not contain sufficient merchantable ore, and not under a provision in the contract authorizing cancellation on payment of a year's royalty, it was error to modify an instruction that defendant company was not bound to make extraordinary tests to ascertain the presence of merchantable ore in the land, and if it made ordinary tests, and did not find ore in sufficient quantity, and the land did not carry such ore in a sufficient quantity, then the jury should find for defendant, by adding the clause, "unless they further believed from the evidence that defendant canceled the contract" as authorised thereby.

4. In an action for breach of a mining lease, a requested instruction that, if the cost of mining ore on plaintiff's land exceeded the cost at other mines in operation, the jury might find from such fact that the cost was not a reasonable cost, as provided in the contract, eliminated from consideration the conditions that might exist in known conditions at the other mines, and therefore was properly refused.

5. In an action for breach of a mining lease, requiring certain mining operations, if merchantable ore capable of being mined at a reasonable cost could be found on the land, an instruction limiting the jury to a consideration of the testimony of expert witnesses as to the merchantableness of the ore was properly refused.

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N. FRANK & SONS v. GUMP.

June 28, 1905.

[51 S. E. 358.]

ACCORD AND SATISFACTION—CONSIDERATION—JUDGMENT NON OBSTANTE VER-  
EDICTO—EVIDENCE—JUDICIAL NOTICE—LAWS OF OTHER STATES—COMMON  
LAW—PRESUMPTIONS.

1. At common law the acceptance by a creditor of the debtor's unsecured notes for a less sum than the original debt does not extinguish the debt.

[Ed. Note.—For cases in point, see vol. 1. Cent. Dig. Accord and Satisfaction, secs. 46-91.]

2. In an action on a bond, a plea of accord and satisfaction, which shows on its face want of consideration, is bad after verdict; entitling plaintiff to judgment notwithstanding a verdict for defendant.

3. The court will take judicial notice that Maryland embraces part of the territory of the original English colonies of America.

[Ed. Note.—For cases in point, see vol. 20, Cent. Dig. Evidence, sec. 15.]

4. In the absence of evidence to the contrary, it will be presumed that the common law obtains in Maryland.

[Ed. Note.—For cases in point, see vol. 10, Cent. Dig. Common Law, sec. 14.]